

# New Customs Rules for a Post-Brexit United Kingdom

December 1, 2017

March 2019 is coming and importers and exporters need to be prepared for what lies ahead. The UK is leaving not only the EU but its Customs Union. No longer will imports into a distribution center in the EU cover sales in the UK. Companies will need to set up logistics to manage UK imports and exports and be compliant with new UK customs regulations. It is likely that a two year “standstill” or “transition” period will be agreed for the April 2019 to March 2021 period. Should the UK leave the EU without an agreed deal on trade and customs, however, the UK would be a third country vis-à-vis the EU (now typically referred to as the “EU27” denoting the 28 EU Member States minus the UK) and all imports and exports between the UK and the EU bloc would be governed by WTO rules.

According to the British Retailers Consortium, with Brexit more than 180,000 companies could be required to make customs declarations for the first time and the UK is expecting more than 200 million additional customs declarations annually. The most significant impact is feared for goods that are transported by road between the UK and the EU27 due to the lack of infrastructure at port facilities to handle queues of trucks on both sides of the Channel. The Republic of Ireland faces significant obstacles given its use of the UK as a land-bridge to the EU single market. While it is unimaginable that a solution will not be found, without an open skies agreement between the UK and the EU27, airplanes carrying everything from people to post, packages and time-sensitive goods will not be able to fly.

With the certainty of a trade deal with the EU27 very much up in the air, the UK is preparing for every eventuality and intends to have new customs arrangements in place on Day One. The Government has allocated approximately 7.5 million GBP to upgrade customs technologies and an additional 300 to 450 million GBP will be spent on hiring up to 4,000 new staff. UK Chancellor of the Exchequer Phillip Hammond included an extra 3 billion GBP in the budget laid before the UK Parliament last week should additional measures be necessary in a “no deal” scenario. And, following the publication of a white paper on customs in late October on which it sought public comment, the Government has now introduced in Parliament its Taxation (Cross-Border Trade) Bill.

The Bill is a broad legal framework that enables the UK Government to determine applicable customs duties for different goods. It empowers the Government to set preferential or additional duties in certain circumstances, rule on tariff classifications and origin of goods, and impose trade remedy measures. It also imposes value-added taxes and excise duties once the UK leaves the EU. Preparing for all possible outcomes, the Bill includes a clause that enables the Government to give effect to a customs union with one or more territories and/or facilitate a permanent or temporary customs union with the EU. A separate Trade Bill introduced earlier in November establishes the Trade Remedies Authority to investigate suspected dumping, etc. Various components of both bills will be given legal effect on different dates in accordance with developments in the negotiations with the EU27.

While the UK will leave the EU Customs Union in order to pursue free trade agreements with other nations, it seeks to maintain a “special and deep” relationship with the EU and to ensure the most

“frictionless” trade possible between the UK and the EU27. The UK will remain a member of the Common Transit Convention and intends to maintain other mechanisms to simplify and facilitate trade with the EU. The UK proposes, for example, to continue to allow imports to the EU via the UK by agreeing to apply EU rules on duties and VAT on goods intended for the EU market - thus ensuring compliance with EU requirements - and UK rules for goods destined only for the UK market.

Whether or not the UK is successful in securing a trade and customs arrangement that extends beyond the free trade agreements between the EU and its other trading partners, facilitating trade post-Brexit is a critical economic interest for the UK. The Bill reflects the focus on streamlined and efficient customs procedures to ensure the UK’s place as a major trading nation. Among other things, the Bill provides for recognition of Authorised Economic Operators (AEO) status to allow access to simplified procedures and/or “fast track” shipments. As is currently the case under EU law, the possibility of total or partial relief of import duties for goods based on the nature or origin of goods or their purpose also is enshrined in the Bill. The explanatory note indicates that this provision may be used, inter alia, to provide relief for items imported on a temporary basis or for education, scientific, cultural or research purposes, trade samples or test items.

The Bill also includes numerous other provisions for expedited and simplified procedures. In general, declarations must be filed within ninety days of presentation of the goods to customs on import except if re-exported within a ninety day period. Provision also is made for declarations to be filed prior to importation with the import following within thirty days.

Despite the 56 clauses and 9 schedules, accompanied by 70 pages of explanation, however, details relevant to businesses remain largely unknown. The Bill creates a legal framework empowering the Government to promulgate - depending on the deal struck with the EU or a no deal withdrawal - myriad secondary regulations that will dictate the duties, excise and value-added taxes charged for business to business and business to consumer shipments.

Which goods can or must be imported with declarations must be made in advance will be determined by regulation. What goods will qualify for relief, which requirements and procedures will apply to AEOs, and which operators and goods will benefit from simplified procedures will only be known when secondary legislation is published. Further, provision will be made by public notice for goods that can be aggregated and imported with a single declaration. Rules for other simplified procedures also will be announced. In addition, regulations will indicate which end uses will qualify for reduced duties under the “authorised use procedure”.

The fact that the details are yet to be worked out creates an opportunity to identify and advocate simplifications and practical solutions to facilitate trade involving the UK. Like the UK, businesses must also prepare themselves for all possible scenarios including the worst-case Brexit without a deal with the EU27. March 2019 is coming; importers and exporters should analyze impacts on their businesses, secure their supply chains, adjust operations to ensure compliance with both the UK and EU VAT systems, and, most importantly, engage with the UK Government to achieve appropriate trade and customs facilitations.